

## Consumer Product Safety Commission

## § 1025.72

other substantiation for any expenses claimed.

(d) *When an application may be filed.*

(1) An application may be filed whenever the applicant has prevailed in a proceeding covered by this subpart or in a significant and discrete substantive portion of the proceeding. However, an application must be filed no later than 30 days after the Commission's final disposition of such a proceeding.

(2) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(3) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(4) For purposes of this subpart, final disposition means the later of:

(i) The date on which an initial decision by the presiding officer becomes final, *see* 16 CFR 1025.52;

(ii) The date on which the Commission issues a final decision (*See* 16 CFR 1025.55);

(iii) The date on which the Commission issues an order disposing of any petitions for reconsideration of the Commission's final order in the proceeding (*See* 16 CFR 1025.56; or

(iv) Issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration.

(e) *Where an application must be filed.*

The application for award and expenses must be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207 in accordance with the application requirements of this section.

### § 1025.72 Procedures for considering applications.

(a) *Filing and service of documents.*

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as provided in the Com-

mission's Rules of Practice, 16 CFR 1025.11–1025.19.

(b) *Answer to application.* (1) Within 30 days after service of an application for an award of fees and expenses, complaint counsel in the underlying administrative proceeding upon which the application is based may file an answer to the application. Unless complaint counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b)(2) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(2) If complaint counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the presiding officer upon request by complaint counsel and the applicant.

(3) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of Commission counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, complaint counsel shall include with the answer either supporting affidavits or a request for further proceedings under paragraph (f) of this section.

(c) *Reply.* Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under paragraph (f) of this section.

(d) *Comments by other parties.* Any party to a proceeding other than the applicant and complaint counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the presiding officer determines that the public interest requires such participation in order to permit

full exploration of matters raised in the comments.

(e) *Settlement.* The applicant and complaint counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the Commission's standard settlement procedure (See 16 CFR 1115.20(b), 1118.20, 1025.26, and 1605.3). If a prevailing party and complaint counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

(f) *Further proceedings.* (1) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or complaint counsel, or on his or her own initiative, the presiding officer may order further proceedings. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(2) A request that the presiding officer order further proceedings under this paragraph shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

(g) *Initial decision.* The presiding officer shall endeavor to issue an initial decision on the application within 30 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the complaint counsel's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision of this Commission will only address the allocable portion for

which this Commission is responsible to the eligible prevailing party.

(h) *Agency review.* (1) Either the applicant or complaint counsel may seek review of the initial decision on the fee application, or the Commission may decide to review the decision on its own initiative, in accordance with 16 CFR 1025.54, 1025.55 and 1025.56.

(2) If neither the applicant nor Commission complaint counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the Commission 30 days after it is issued.

(3) If an appeal from or review of an initial decision under this subpart is taken, the Commission shall endeavor to issue a decision on the application within 90 days after the filing of all briefs or after receipt of transcripts of the oral argument, whichever is later, or remand the application to the presiding officer for further proceedings.

(i) *Judicial review.* Judicial review of final Commission decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

(j) *Payment of award.* An applicant seeking payment of an award shall submit to the Secretary of the Commission a copy of the Commission's final decision granting the award, accompanied by a verified statement that the applicant will not seek review of the decision in the United States courts. (Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.) The Commission will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding. Comments and accompanying material may be seen in or copies obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, during working hours Monday through Friday.

#### APPENDIX I TO PART 1025—SUGGESTED FORM OF FINAL PREHEARING ORDER

##### *Case Caption*

A final prehearing conference was held in this matter, pursuant to Rule 21 of the Commission's Rules of Practice for Adjudicative

## Consumer Product Safety Commission

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Proceedings (16 CFR 1025.21), on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_\_ stm.

Counsel appeared as follows:

For the Commission staff:

For the Respondent(s):

Others:

1. Nature of Action and Jurisdiction. This is an action for \_\_\_\_\_ and the jurisdiction of the Commission is invoked under United States Code, Title \_\_\_\_\_, Section \_\_\_\_\_ and under the Code of Federal Regulations, Title \_\_\_\_\_, Section \_\_\_\_\_. The jurisdiction of the Commission is (not) disputed. The question of jurisdiction was decided as follows:

2. Stipulations and Statements. The following stipulation(s) and statement(s) were submitted, attached to, and made a part of this order:

(a) A comprehensive written stipulation or statement of all uncontested facts;

(b) A concise summary of the ultimate facts as claimed by each party. (Complaint Counsel must set forth the claimed facts, specifically; for example, if a violation is claimed, Complaint Counsel must assert specifically the acts of violation complained of; each respondent must reply with equal clarity and detail.)

(c) Written stipulation(s) or statement(s) setting forth the qualifications of the expert witnesses to be called by each party;

(d) Written list(s) of the witnesses whom each party *will* call, written list(s) of the additional witnesses whom each party *may* call, and a statement of the subject matter on which each witness will testify;

(e) An agreed statement of the contested issues of fact and of law, or separate statements by each party of any contested issues of fact and law not agreed to;

(f) A list of all depositions to be read into evidence and statements of any objections thereto;

(g) A list and brief description of any charts, graphs, models, schematic diagrams, and similar objects that will be used in opening statements or closing arguments but will not be offered in evidence. If any other such objects are to be used by any party, those objects will be submitted to opposing counsel at least three days prior to the hearing. If there is then any objection to their use, the dispute will be submitted to the Presiding Officer at least one day prior to the hearing;

(h) Written waivers of claims or defenses which have been abandoned by the parties.

The foregoing were modified at the pretrial conference as follows:

(To be completed at the conference itself. If none, recite "none".)

3. Complaint Counsel's Evidence. 3.1 The following exhibits were offered by Complaint Counsel, received in evidence, and marked as follows:

(Identification number and brief description of each exhibit)

The authenticity of these exhibits has been stipulated.

3.2 The following exhibits were offered by Complaint Counsel and marked for identification. There was reserved to the respondent(s) (and party intervenors) the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality)

4. Respondent's Evidence. 4.1 The following exhibits were offered by the respondent(s), received in evidence, and marked as herein indicated:

(Identification number and brief description of each exhibit)

The authenticity of these exhibits has been stipulated.

4.2 The following exhibits were offered by the respondent(s) and marked for identification. There was reserved to Complaint Counsel (and party intervenors) the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality)

5. Party Intervenor's Evidence. 5.1 The following exhibits were offered by the party intervenor(s), received in evidence, and marked as herein indicated:

(Identification number and brief description of each exhibit)

The authenticity of these exhibits has been stipulated.

5.2 The following exhibits were offered by the party intervenor(s) and marked for identification. There was reserved to Complaint Counsel and respondent(s) the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality)

NOTE: If any other exhibits are to be offered by any party, such exhibits will be submitted to opposing counsel at least ten (10) days prior to hearing, and a supplemental note of evidence filed into this record.

6. Additional Actions. The following additional action(s) were taken:

(Amendments to pleadings, agreements of the parties, disposition of motions, separation of issues of liability and remedy, etc., if necessary)

7. Limitations and Reservations. 7.1 Each of the parties has the right to further supplement the list of witnesses not later than ten (10) days prior to commencement of the hearing by furnishing opposing counsel with the

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name and address of the witness and general subject matter of his/her testimony and by filing a supplement to this pretrial order. Thereafter, additional witnesses may be added only after application to the Presiding Officer, for good cause shown.

7.2 Rebuttal witnesses not listed in the exhibits to this order may be called only if the necessity of their testimony could not reasonably be foreseen ten (10) days prior to trial. If it appears to counsel at any time before trial that such rebuttal witnesses will be called, notice will immediately be given to opposing counsel and the Presiding Officer.

7.3 The probable length of hearing is \_\_\_\_ days. The hearing will commence on the \_\_\_\_ day of \_\_\_\_, 19\_\_, at \_\_ o'clock \_\_ m. at \_\_\_\_.

7.4 Prehearing briefs will be filed not later than 5:00 p.m. on \_\_\_\_\_. (Insert date not later than ten (10) days prior to the hearing.) All anticipated legal questions, including those relating to the admissibility of evidence, must be covered by prehearing briefs.

This prehearing order has been formulated after a conference at which counsel for the respective parties appeared. Reasonable opportunity has been afforded counsel for corrections or additions prior to signing. It will control the course of the hearing, and it may not be amended except by consent of the parties and the Presiding Officer, or by order of the Presiding Officer to prevent manifest injustice.

\_\_\_\_\_  
Presiding Officer.

Dated: \_\_\_\_\_

Approved as to Form and Substance

Date: \_\_\_\_\_

\_\_\_\_\_  
Complaint Counsel.

\_\_\_\_\_  
Attorney for Respondent(s)

\_\_\_\_\_  
\*Attorney for Intervenor(s)

\*NOTE: Where intervenors appear pursuant to §1025.17 of these Rules, the prehearing order may be suitably modified; the initial page may be modified to reflect the intervention.

**PART 1027—SALARY OFFSET**

Sec.

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1027.12 Interest, penalties, and administrative costs.

AUTHORITY: 5 U.S.C. 5514, E.O. 11809 (redesignated E.O. 12107), and 5 CFR part 550, subpart K.

SOURCE: 55 FR 34904, Aug. 27, 1990, unless otherwise noted.

**§ 1027.1 Purpose and scope.**

(a) This regulation provides procedures for the collection by administrative offset of a Federal employee's salary without his/her consent to satisfy certain debts owed to the Federal government. These regulations apply to all Federal employees who owe debts to the Consumer Product Safety Commission (CPSC) and to current employees of CPSC who owe debts to other Federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq.*;

(2) The Social Security Act, 42 U.S.C. 301 *et seq.*;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 *et seq.*, and 4 CFR parts 101 through 105.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting